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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,623	02/22/2002	Kenneth Brincat	52194-00002	4453
7590	11/21/2003		EXAMINER	NICOLAS, FREDERICK C
Stanley R. Moore, Esq. Jenkens & Gilchrist, P.C. Suite 3200 1445 Ross Avenue Dallas, TX 75202-2799			ART UNIT	PAPER NUMBER
			3754	
			DATE MAILED: 11/21/2003	

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/082,623	BRINCAT, KENNETH
Examiner	Art Unit	
Frederick C. Nicolas	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-11,13-15,17-22 and 24-39 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 39 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-11,13,15,17-22 and 24-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1,3-11,13-15,17-22 and 24-39 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 February 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). 11.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other:

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/28/2003 has been entered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed subject matter in claim 7, lines 1-3, "wherein said discharge assembly comprises a spray device attached to said refillable container and adapted for the discharge of the contents of said refillable container in a spray form", in claim 18, lines 1-3, "wherein said upper discharge assembly comprises a pump unit adapted for pumping of the contents of said refillable container outwardly therefrom by a pumping operation thereof" and the claimed subject matter in claim 30, lines 1-3, "wherein said refill-discharge cap assembly includes a spray device adapted for the discharge of the contents of said refillable container in a spray form" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 22,24,26-29,31-32,34 are rejected under 35 U.S.C. 102(b) as being anticipated by embodiment #16 of Klingaman 4,088,246.

With respect to claims 22 and 34, Klingaman discloses a refillable container for holding a volume of liquid substance poured therein for select discharge therefrom as seen in Figure 16, which comprises a first bottle body (70) portion adapted for poured receipt of a liquid substance poured therein and having a refill orifice of a first size sufficiently large to facilitate the poured filling of the refillable container (col. 8, ll. 8-14, note: the opening within the neck (71) of the bottle body is the orifice), a second bottle body (77) portion forming a refill-discharge cap assembly adapted for mated engagement with and securement to the first bottle body portion with the liquid substance (col. 8, ll. 19-26), the liquid substance being in physical contact with the bottle body portion and facilitating selective discharge therefrom (col. 8, ll. 36-46), the refill discharge cap assembly including a discharge orifice of a second size (col. 8, ll. 47-52, and note: the formed opening at the tip (84) is the orifice), the second size being

substantially smaller than the first size of the refill orifice of the first bottle body portion as seen in Figure 16.

With respect to claim 24, Klingaman discloses that the refill-discharge cap is threadably connected to the first bottle body portion (col. 8, ll. 19-24).

With respect to claim 26, Klingaman discloses that the liquid substance comprises soap (col. 3, ll. 9-17).

With respect to claim 27, Klingaman discloses that the liquid substance comprises a conditioner (col. 8, ll. 47-52).

With respect to claim 28, Klingaman discloses that the liquid substance comprises a consumer product (product in capsules) sold in volumes substantially greater than the volume (bulk) of the refillable container (col. 3, ll. 9-25 and col. 8, ll. 1-7).

With respect to claim 29, Klingaman discloses that the refillable container is generally cylindrical in shape as seen in Figure 16.

With respect to claims 31-32, Kligaman discloses that the refillable container is flexible in construction whereby the liquid substance contained therein may be squeezed to facilitate the discharge thereof (col. 8, ll. 8-14), where the refillable container is constructed of plastic (col. 8, ll. 8-14).

5. Claims 22,34,36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by embodiment #10 of Klingaman 4,088,246.

With respect to claims 22,30 and 34, Klingaman discloses a refillable container for a liquid substance poured therein for select discharge therefrom as seen in Figure

10, which comprises a vessel (35) of known volume adapted for holding a volume of poured liquid substance therein, a discharge assembly (37,39) having a discharge orifice (see Figure 10 for location, note: the diameter of noted opening is the discharge orifice) of a first size adapted for select discharge of quantities of the liquid substance poured into the refillable container as seen in Figure 10, a refill assembly having a refill orifice (the opening within the neck (36) of the vessel) of a second size and comprising a portion of the refillable container adapted for facilitating the poured filling of the container with the liquid substance as seen in Figure 10, the refill assembly sufficiently large to facilitate the receipt of the poured liquid substance therethrough to therein facilitate ease in the poured filling of the refillable container with the liquid substance and the liquid substance being in physical contact with the refillable container (col. 6, II. 61-66 and as seen in Figure 10), the second orifice being larger than the first orifice of the refillable container as seen in Figure 10, the discharge assembly being threadably connected to a second body portion of the refillable container (col. 5, II. 56-62), the liquid substance comprises a conditioner (col. 8, II. 47-52), the refillable container is generally cylindrical in shape as seen in Figure 10, the discharge assembly comprises a spray device/cap (39) attached to the refillable container and adapted for the discharge of the contents of the refillable container in a spray form as seen in Figure 10, the discharge assembly is disposed on a first end of the container and the refill assembly is disposed at a second, opposite end of the container (see Figure 10 for location of the first end and the second end), the refill assembly and the discharge assembly are both disposed at the same end of the refillable container as seen in Figure 10.

With respect to claim 36-37, Klingaman discloses that the discharge assembly comprises a pump unit/cap (39) for pumping of the contents of the refillable container outwardly therefrom by a pumping operation thereof.

With respect to claim 38, Klingaman discloses that the liquid substance comprises a liquid of the type commonly sold to consumers (product in capsule) in quantities larger than the volume (bulk) of the refillable container (col. 3, ll. 9-25 and col. 8, ll. 1-7).

With respect to claim 39, Klingaman discloses that the liquid comprises a soap for use by consumers (col. 3, ll. 9-17).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1,3-8,11,13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over embodiment #10 of Klingaman 4,088,246 in view of Greco 3,517,450.

With respect to claim 1, Klingaman discloses a refillable container for a liquid substance poured therein for select discharge therefrom as seen in Figure 10, which comprises a vessel (35) of known volume adapted for holding a volume of poured liquid substance therein, a discharge assembly (37,39) having a discharge orifice (see Figure 10 for location, note: the diameter of noted opening is the discharge orifice) of a first

size adapted for select discharge of quantities of the liquid substance poured into the refillable container as seen in Figure 10, a refill assembly having a refill orifice (the opening within the neck (36) of the vessel) of a second size and comprising a portion of the refillable container adapted for facilitating the poured filling of the container with the liquid substance as seen in Figure 10, the refill assembly sufficiently large to facilitate the receipt of the poured liquid substance therethrough to therein facilitate ease in the poured filling of the refillable container with the liquid substance and the liquid substance being in physical contact with the refillable container (col. 6, ll. 61-66 and as seen in Figure 10), the second orifice being larger than the first orifice of the refillable container as seen in Figure 10, the discharge assembly being threadably connected to a second body portion of the refillable container (col. 5, ll. 56-62), the liquid substance comprises a conditioner (col. 8, ll. 47-52), the refillable container is generally cylindrical in shape as seen in Figure 10, the discharge assembly comprises a spray device/cap (39) attached to the refillable container and adapted for the discharge of the contents of the refillable container in a spray form as seen in Figure 10, the discharge assembly is disposed on a first end of the container and the refill assembly is disposed at a second, opposite end of the container (see Figure 10 for location of the first end and the second end), the refill assembly and the discharge assembly are both disposed at the same end of the refillable container as seen in Figure 10. Klingaman lacks a means for identifying the selected poured liquid substance within the refillable container, where the means for identifying comprises a label disposed upon the refillable container for the placement of indicia by a consumer for the identification of the contents thereof. Greco teaches the

use of having a means for identifying a substance within a transparent container (25) as seen in Figures 1 and 3, where the means for identifying comprises a label (10) disposed upon the container for the placement of indicia by a consumer for the identification of the contents thereof (col. 2, ll. 55-72 onto col. 3, ll. 1-25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Greco's label (10) onto the Klingaman's container, in order to provide an entry-recording label attachable to the container, as taught by Greco (col. 2, ll. 29-37).

With respect to claim 11, see above rejection as applied to claim 1 and the following reasoning.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klingaman's container to be transparent as taught by Greco (col. 3, ll. 1-5), in order to allow the level of its contents to be readily determined.

With respect to claims 3-8, 13-15 see above rejection as applied to claim 1.

8. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over embodiment #10 of Klingaman 4,088,246 in view of Greco 3,517,450 as applied to claim 1 above, and further in view of Copeland et al. 5,992,698.

Klingaman-Greco in combination has taught all the features of the claimed invention except that the refillable container is constructed of plastic. Copeland et al. teach the use of a refillable container (13), where the refillable container is made of plastic (col. 3, ll. 66-67 onto col. 4, ll. 1-2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Klingaman's container to be manufactured of plastic as taught by Copeland et al. above, in order to provide a container that is inexpensive to manufacture and durable as taught by Copeland et al. (col. 3, ll. 8-9).

With respect to claims 18-21, see above rejection as applied to claim 1 of embodiment #10 of Klingaman.

9. Claims 1,9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over embodiment #16 of Klingaman 4,088,246 in view of Greco 3,517,450.

With respect to claim 1, Klingaman discloses a refillable container for a selected liquid substance poured therein for select discharge therefrom (col. 8, ll. 61-66), which comprises a vessel (70) of known volume adapted for holding a volume of poured liquid substance therein, a discharge assembly (77) adapted for select discharge of quantities of the liquid substance poured into the refillable container (col. 8, ll. 47-52), a refill assembly (70) comprising a portion of the refillable container adapted for facilitating the poured filling of the refillable container with the selected liquid substance, the refill assembly being constructed with a diameter larger than that of the discharge assembly and sufficiently large to facilitate the receipt of the selected poured liquid substance therethrough to therein facilitate ease in the poured filling of the refillable container with the selected liquid substance and the selected liquid substance being in physical contact with the refillable container (col. 8, ll. 36-46). Klingaman lacks a means for identifying the selected poured liquid substance within the refillable container. Greco teaches the use of having a means for identifying a substance within a transparent

container (25) as seen in Figures 1 and 3, where the means for identifying comprises a label (10) disposed upon the container for the placement of indicia by a consumer for the identification of the contents thereof (col. 2, ll. 55-72 onto col. 3, ll. 1-25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Greco's label (10) onto Klingaman's container, in order to provide an entry-recording label attachable to the container, as taught by Greco (col. 2, ll. 29-37).

With respect to claims 9-10, Kligaman discloses that the refillable container is flexible in construction whereby the liquid substance contained therein may be squeezed to facilitate the discharge thereof (col. 2, ll. 7-21), where the refillable container is constructed of plastic (col. 8, ll. 8-14).

10. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over embodiment #16 of Klingaman 4,088,246 in view of Greco 3,517,450.

Klingaman has taught all the features of the claimed invention except that at least portions of the refillable container are formed of substantially transparent material for allowing the visual identification of the contents thereof. Greco teaches the use of a container (25), where container is formed of transparent material for allowing the visual identification of the contents thereof (col. 3, ll. 1-5).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klingaman's container to be transparent as taught by Greco (col. 3, ll. 1-5), in order to allow the level of its contents to be readily determined.

11. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over embodiment #10 of Klingaman 4,088,246 in view of Copeland et al. 5,992,698.

Klingaman has taught all the features of the claimed invention except that the refillable container is constructed of plastic. Copeland et al. teach the use of a refillable container (13), where the refillable container is made of plastic (col. 3, ll. 66-67 onto col. 4, ll. 1-2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Klingaman's container to be manufactured of plastic as taught by Copeland et al. above, in order to provide a container that is inexpensive to manufacture and durable as taught by Copeland et al. (col. 3, ll. 8-9).

***Response to Arguments***

12. Applicant's arguments filed 10/28/2003 have been fully considered but they are moot in view of the new ground(s) of rejection.

***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on (703)-308-9646. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-93026.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0861.

FN  
November 13, 2003



Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754